

Illinois Environmental Protection Agency

February 2018

Responsiveness Summary

Revision to State Rules:

- 35 Ill. Adm. Code 164: Procedures for Informational and Quasi-Legislative Public Hearings
- 35 Ill. Adm. Code 166: Procedures for Permit and Closure Plan Hearings
- 35 Ill. Adm. Code 252: Public Participation in the Air Pollution Control Permit Program

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Statement of Conclusions

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) has determined that no changes to the rule are necessary in response to comments received. The tremendous cost savings from utilizing electronic notice (approximately \$300,000 per year), combined with the Agency’s experience that most commenters on Agency actions do so after receiving direct mailings or e-mails, reinforces the Agency’s belief that electronic notice is the best use of the Agency’s limited resources. The Illinois EPA will proceed to Second Notice for the proposed rulemaking.

Additional copies of this document can also be obtained from the Illinois EPA website.

<http://www.epa.illinois.gov/public-notices/general-notices/index>

Background

On November 17, 2017, the Agency filed with the Secretary of State amendments to 35 Ill. Adm. Code 252, Public Participation in the Air Pollution Control Permit Program, 35 Ill. Adm. Code 164, Procedures for Informational and Quasi-Legislative Public Hearings, and 35 Ill. Adm. Code 166, Procedures for Permit and Closure Plan Hearings, to allow electronic notice for some permits and hearings. The amendments are intended to address a final rule promulgated by USEPA revising the public notice provisions of the New Source Review, Title V and Outer Continental Shelf permit programs. (*See* 81 Federal Register 71613). The final rule removes the mandatory requirement to provide public notice of a draft permit (as well as certain other program actions) through publication in a newspaper. Instead, the final rule requires e-notice for some actions and allows e-notice for others. Accordingly, the Illinois EPA is revising its own rules to allow for e-notice where applicable to conform with federal standards. The rule should reduce State costs, increase efficiency, and improve public access to information.

Parts 164, 166, and 252 are being amended to allow notice of certain types of hearings and actions to be placed on the Agency’s website rather than in a newspaper. The amendments provide that notice shall stay on the website for the duration of the public comment period. In certain circumstances, notice may be provided by other means as well. If the Environmental Protection Act (Act) or other applicable law requires that notice be given in a newspaper, notice shall also be by newspaper. In addition, should the Director of the Illinois EPA feel it necessary, notice may be placed in a newspaper or, in certain circumstances, in the Illinois Register.

Comment Period

Notice of the proposed rulemaking was published in the Illinois Register on December 8, 2017. The Illinois EPA, Bureau of Air, held a public hearing on January 11, 2018, at 1021 North Grand Avenue East, Springfield, Illinois, for the purpose of gathering public comments on the Illinois EPA’s proposed amendments. Several procedural questions were asked at hearing and answered by Illinois EPA staff. The hearing record and public comment period closed on January 22, 2018. The only written comment received was by Suzan Zingle and was in opposition to the proposed amendments.

The Illinois EPA has reviewed the comments, prepared this responsiveness summary, but made no changes to the proposed amendments based on the comments received.

Questions and Comments with Responses by the Illinois EPA

- 1) I must object to the proposed change in the rules to eliminate the requirement that the notice of upcoming hearings be printed in local newspapers, permitting only posting on the agency's web site. For those of us who are active in our communities, the newspaper provides a "one-stop shop" for notices of all upcoming meetings, hearings, town halls, etc., that may be of interest. I read the paper every day, and do peruse the public notices. Removal of your agency's events from the newspaper means that I now must make a separate search daily(?), weekly(?) to be informed of EPA hearings of interest. There is a trend of public bodies trying to save a few pennies by eliminating newspaper ads. If they all do it, eventually I would have to search each and every website that might potentially be of interest (essentially all 7000+ of them) to be informed. It's physically impossible. The result of such a change is a less well informed and engaged public. Please don't be penny wise and pound foolish - educated citizens are actually a good resource for any public agency.

The Illinois EPA is in agreement with the sentiment expressed in the comment that a well informed and engaged public is in the interest of good public decision making. However, the Agency disagrees that public engagement may only be achieved through the printing of notices in local newspapers. The Agency's public outreach for permitting, addressed in this change, currently includes a multi-pronged approach to informing the public, including web postings and direct mailing/e-mailing. The Agency has found through decades of experience that most commenters on Agency actions do so after receiving direct mailings or e-mails, and that comments and questions resulting from the viewing of a notice in a newspaper are rare. In this manner, a person that has a general interest in Agency programs receives notice directly even if the action is not in their area, and thus not in their newspaper. In this respect it is notable that this notice did not appear in the commenter's local newspaper but the commenter received the notice through e-mail notification. The preponderance of the public, even those reading newspapers, also receive information through newer forms of media. The Agency will continue to assess other potential methods in the future to ensure that the People of Illinois may be able to receive notifications from the Agency in a manner that is conducive and convenient for their information.

Separately, it is of note that the revised regulation does not prohibit the Agency from publishing a newspaper notice in those instances when the Agency's opinion is that it would be beneficial to public engagement. The savings to the Agency is also not inconsequential and can top \$300,000 each year.

- 2) Where in the process is the Agency in developing the IT infrastructure to implement the rules?

The Agency already has the permit notice database established on our website and is using it to publish notifications, <http://www.epa.illinois.gov/public-notices/index>

- 3) Will the Agency begin implementing the rules immediately once effective?

Yes, once effective and approved as part of the SIP the Agency will begin implementing the revisions.

- 4) Will the online notice be substantially equivalent to what was posted previously in the newspaper?

Yes, the requirements in the regulation that outline the contents of the notice are not being revised and the Agency plans to continue using the format and content currently in use.

- 5) Will there be any corresponding changes to how the Agency will handle either trade secret or confidential business information?

The Agency is not revising any regulations that relate to the handling, processing, screening or release of trade secret or CBI information. These revisions will have no change on the Agency's handling of this information.

For Additional Information

Questions about this action may be directed to:

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